

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, SEPTEMBER 25, 2000

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Doyne Bailey, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Greg Hamilton, Chief of Enforcement; Denise Hudson, Director of Resource Management; Gayle Gordon, Director of Legal and Gene Bowman, Director of General Services. Present to receive certificate of service: Dick Munson, Houston Compliance. Comment was received from: Stewart Knight, Houston; Russell Gregorczyk, Kyle; Robert Doner, Austin; Rene Gonzalez, San Antonio and Larry Vinyard, Austin.

The agenda follows:

1:30 p.m. - Call to order.

1. Recognition of agency employees with 20 or more years of service.
2. Approval of minutes of August 28, 2000 meeting; discussion, comment, possible vote.
3. Consideration of administrator's compensation; discussion, comment, possible vote.
4. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
5. Receive information regarding cost of privatizing internal auditor function; discussion, comment, possible vote.
6. Consider repeal of 16 TAC §41.22 as published in 25 TexReg 7448 on August 11, 2000; discussion, comment, possible vote. (Package Store Sales Over Three Gallons)
7. Consider repeal of 16 TAC §45.103 as published in 25 TexReg 7448 on August 11, 2000; discussion, comment, possible vote. (Regulations of "Happy Hour")
8. Consider adoption of new 16 TAC §45.103 as published in 25 TexReg 7448-7449 on August 11, 2000; discussion, comment, possible vote. (On-Premises Promotions)
9. Consider publication of Notice of Readoption of 16 TAC Chapter 45 pursuant to Rule Review Plan as published in 25 TexReg 823 on February 4, 2000; discussion, comment, possible vote. (Marketing Practices)
10. Consider publication of proposed review of rules contained in 16 TAC Chapters 47, 49 and 50 pursuant to Rule Review Plan; discussion, comment, possible vote. (Blanket Rules, Production of Alcoholic Beverages and Alcohol Awareness and Education)
11. Public comment.

Announcement of executive session:

12. Executive session:
 - a. the commission may go into executive session regarding item number 3 of this agenda pursuant to Texas Government Code, §551.074; and
 - b. the commission may go into executive session to consult with legal counsel regarding items 6, 7, 8, 9, 10 or 11 of this agenda pursuant to Texas Government Code, §551.071.

Continue open meeting.

13. Take action, including a vote if appropriate, on topics listed for discussion under executive session.
14. Adjourn.

The meeting was called to order at 1:41 p.m. by Chairman Shivers.

MR. SHIVERS: Good afternoon. I will call this meeting of the Texas Alcoholic Beverage Commission to order on September 25, 2000. It is one forty-one in the afternoon.

First, before we go into the business of the commission, I'd like us all to take a moment and reflect upon the life and friendship of our good friend,

Wade Spilman, who died recently.

Thank you. We will miss him. He was a great guy.

We have two employees who have been with us for 20 years or more. First is Bill Horan who began his career as a compliance officer in the Dallas Office in 1975. After two years in Dallas, he transferred to the Fort Worth office. Bill graduated from Texas Wesleyan. He is fond of reading and enjoys spending time at his house on Lake Possum Kingdom boating and jet skiing. He is the father of two children, Kimberly and Kenyon. Bill could not be with us today, and his certification has been forwarded to him.

Next we have Dick Munson who began his career as a compliance officer in the Houston office in 1975 and is one of our most knowledgeable excise tax specialists and is an expert in special investigations. He graduated from the University of Texas and is an avid photographer of birds, still scenes and wildlife. Some of his pictures of Yellowstone Park are on display in the Houston office. Dick and his wife, Betty, have raised two sons, Michael and David, and are currently enjoying the benefits of grandparenthood.

Congratulations.

MR. MUNSON: Thank you.

MR. SHIVERS: We are going to go out of order a bit and go directly to the public comment section.

MR. BAILEY: Is Ms. Knight here?

MS. KNIGHT: Yes, I am.

MR. BAILEY: She had contacted Lou Bright and asked that she be able to make a presentation to the commission during public comment.

MR. SHIVERS: Ms. Knight, if you will identify yourself for the record, please, ma'am?

MS. KNIGHT: Yes, I will.

My name is Stewart Knight, and I'm the mother of Michael Matthew Knight who was killed February 1996 in an alcohol-related accident.

Commissioner Shivers, Commissioner Steen, Commissioner Madden, I'm here today to voice my disappointment and disgust in the Alcoholic Beverage Commission.

The TABC, I feel, has sold me, my son and my family out on two occasions. The first was when my son, Matthew, was killed in an alcohol-related accident.

Agent Tracey Cox came into our lives and investigated the facts of the case. She was very helpful and understanding, and I will never stop thinking of her and praying for her family. Officer Cox kept us abreast of everything that was going on in the case and was open and honest.

When we finally, after a year, went to an administrative hearing, Agent Cox came from Austin to assist the attorney generals. What came out of that hearing regarding Chuck E. Cheese was shocking. At the

administrative hearing, Judge Barbara C. Marquadt found - and I quote - Based on the egregious facts, the ALJ recommends that respondent's permit be cancelled - end quote. Quote - It appears to the ALJ that the facts of the case fall squarely within the types of the activity the legislature sought to condemn. Quote - All the facts lend the ALJ to find the respondent acted with criminal negligence in this instance.

She ordered a proposal for cancellation. Randy Yarbrough, after some minor appeals, signed the cancellation for cause order. After this, my husband and I, along with my attorney, informed Mr. Clyde Burleson, who was then handling the case, that we would like to be notified if any hearings or appeals were held. I don't know what he told my attorney, but I was told it was none of my business. It was between CEC Entertainment and the TABC. My son is dead and it's none of my business?

As appeals took place, I was only able to get information as to the status of the case from Agent Cox. I could not believe that when this was appealed to the district court level that any district judge in good conscience could read the facts of the case and give CEC Entertainment, Inc. a seven-day suspension. But, Judge Anne Ashby of the 134th District Court in Dallas did. Obviously, CEC Entertainment took the appeal to a district judge who, shall we say, was friendly to them.

A boy is killed. A family of five is injured. Minors were being told by managers to serve alcohol, knowing it was illegal. Managers knowing that minors were drinking but took no steps to stop it. Every teenager that testified, except one, at the administrative hearing stated that they drank, as well. One girl stated - quote - every time we closed, pretty much people, somebody, would drink - end quote. And all of these violations should be punished by a seven-day suspension?

The TABC then appealed to the Court of Appeals 5th District at Dallas. The TABC settled with CEC Entertainment January 5th. I found out February 22nd. I called the legal office and was told by Mr. Del Cueto to fax the request under the Open Records Act as I wasn't going to like what he had to say. He was right. I didn't. The agreement stated that CEC Entertainment would get a 90-day suspension of their license which was retroactive. So, I really don't know how much time their suspension was for, and I also found out about the agreed order which called for all CEC Entertainment, Inc. employees in the State of Texas, who are corporate owned, to be seller-server trained. The worst part of this conversation was finding out that Agent Tracey Cox had been shot and killed.

I realized from the way my family was treated that the TABC was there for big business and big money. Since we are in such a business-biased society, the common citizen means nothing at all. My son's life meant nothing.

It's time that the TABC stop being afraid of and protecting larger corporations and law firms with big bucks. Why should we, as plaintiffs, not be allowed to know of a court's decision or an agreement between the TABC and CEC Entertainment? After all, it was my son who was killed. This shows a total bias as to where the TABC stands.

It's time you become courageous and fight for the common citizen and not give in to large companies and law firms or pressure from those friendly to a corporation.

When this all started, I believed in our justice system, in the TABC and

even in people just doing the right thing. I know now that I was totally naive.

Although the CEC Entertainment and TABC's case had been settled, my husband and I still had our protest that we had filed. After a lot of complaining and letters by me, it was bumped to Gayle Gordon. Ms. Gordon told me to get her some new information so the TABC could join in our protest, and I did just that.

Once alcohol again started being sold at the Webster Chuck E. Cheese location, I picketed in 100 degree weather all last summer at the front of Chuck E. Cheese that my son worked at. Finally, I got a tip from a customer who said he was a tavern owner and that there were violations all over the restaurant. I called this into Ms. Gordon. She sent agents out to the Webster location and they found minors again selling and serving and that the Webster Chuck E. Cheese was in violation of the - quote - agreed order - end quote - for all of their employees to be seller-server trained. After speaking with Ms. Gordon about this, I started reading the agreed order, and I realized it was for every Chuck E. Cheese in the state that is corporate owned. I called the Austin TABC and left a message asking if any agent had been sent to the other 20 restaurants. That, to me, seemed the next logical step that should be taken. I received no response.

After writing Mr. Shivers about this, he told Mr. Bailey to see that this was done. Quote - It was his intention that this case be resolved with the highest degree of justice - end quote. The highest degree of justice.

The reports came back about the other restaurants of those that were under the agreed order. Of the 20 remaining, 18 were not compliant, and some even had minors selling and serving. I gave Gayle Gordon the new evidence. I picketed the restaurant in Webster to get a tip. I wrote Mr. Shivers about the agents not being sent to other stores under the agreement and, now, we are nothing - sold out for what the Fulbright and Jaworski attorneys want again. Again, my son's life means nothing.

I did your work for you, and for this we received no consideration, and I have no say in the settlement process. If it were left up to your agents, these violations would still be happening. Again, how many violations does it take to get an alcohol license cancelled in Texas? I can't believe that one boy dead, five people injured, an ALJ finding criminal negligence, the facts of the case egregious and everything the legislature sought to condemn - managers knowingly breaking the law by having minors selling, serving and, worst of all, knowing that their minor employees were drinking and doing nothing about it - then only a few months later, the same corporation turns around and violates the agreed order that their attorneys wrote, as well as having minors again selling and serving. Again, what does it take to get an alcohol license cancelled in Texas?

Governor Bush has said that - quote - This grant will help encourage young Texans to make the right choices and it sends a strong message to businesses that Texas would not tolerate the sale or provision of alcohol to minors. A 90-day suspension for all of these violations is a strong message? Sorry, Governor Bush, but the judges and the TABC certainly don't understand the message you say you are trying to send.

Will it take one of your children dying in the same way, crushed to death in a car, for you to understand and care? Even as angry as I am now, I wouldn't wish this hell on anyone.

I spoke with Ms. Gordon over a year ago, and she promised me she was going for cancellation for cause, though the courts would only allow CEC Entertainment to voluntarily turn in their licenses with cancelled for cause attached. She also said that if the case went to trial she would win it at the administrative hearing. There would be a possibility that it could be reversed on the district level if CEC Entertainment appealed it to a judge that is friendly to them and she would win it on appeal. Like a fool, I believed and I trusted her. I should have known I would be sold out again. After all, I don't have a lot of money nor am I a big business.

I have found out that this new case against CEC Entertainment, including my personal protest, is being settled with a voluntary turning in of all licenses by CEC Entertainment instead of any cancellation for cause because it could have affected CEC Entertainment's licenses and permits in other states. Who are you supposed to be looking out for, the people of Texas or the multimillion dollar national corporation? And, you can do this without any regard of my family's feeling, without any concern for my son or the work we have done to get to this point? The common citizen loses again.

It doesn't matter that this corporation does nothing but lie and doesn't even blink an eye to the fact that they have not done what they promised to do in the first agreed order, and you certainly must know that they will turn around and do it again. Why don't you care about our teenagers lives instead of protecting a multimillion dollar corporation? Isn't the TABC a state agency whose purpose is to represent the people, not multimillion dollar businesses? I guess not. After all, profits are more important than human lives.

On February 21, 1996, when I called the Webster Chuck E. Cheese to let the general manager know that my son had been killed on his way home from work, the manager's response was - and I quote - Well, it was probably for the best - end quote. Just because someone is learning disabled doesn't mean that they can't have a good life. But, this comment shows the mentality of this corporation from the top to the bottom.

I also have an issue as to why the adult who was on duty the night of February 20, 1996 was not charged with any crime. My son made an immature decision. I know that. But, normally when a teenager does make an immature decision, there is an adult there to stop them. There was an adult at Chuck E. Cheese that night, Marie Casavage (sp). She knew Matt and others were drinking and drunk. As one worker said - quote - How could she not have known? - unquote. Matt was loud, bloodshot eyes, slurred speech and clumsy. To get out of that restaurant, Marie Casavage (sp) would have had to walk with him down a small corridor that lead to the door and unlocked the door for him, all with an open cup of beer in his hand. How blatant can it get? All she had to do was call me. She knew he lived with his parents. She knew he was in high school, and she had an emergency phone number. I could have been there in five minutes, and Matt would be alive today and I would not be here. But, the only thing she cared about was playing the odds with his life so that no one would find out what went on at that restaurant every night. As far as I am concerned she and CEC Entertainment are murderers. But to them, there is no penalty.

I truly don't understand how no one cares about Matt's life. Twice now, CEC Entertainment has broken many laws over and over, and Fulbright and Jaworski have gotten them off with a minor punishment that they didn't even try to follow. When are you going to do the just and right

thing instead of curling up in a corner and jumping when Fulbright and Jaworski says jump?

Again, what does it take to get an alcohol license cancelled in Texas? How many lives have to be lost before lives come before money and you get enough courage to find true justice? This is all I want, justice for the death of my child and, so far, I haven't seen it.

Now I have been accused by Ms. Gordon of wanting to disembowel CEC Entertainment, this multimillion dollar corporation on the New York Stock Exchange. I am only one person, a mother who is fighting for one thing and that is justice for the death of her child. I am angry at this company because they continuously break the law over and over and have never received - quote - the fullest degree of justice - as Mr. Shivers said, or, basically, any punishment, since they have continuously ignored prior attempts at punishment even as ridiculously mild as it was.

To Ms. Gordon, you knew where I stood from the first conversation we had, so don't get angry with me. You are the one who made the 180 degree turn in position. I did not. Who's putting pressure on you, Ms. Gordon? Obviously someone is. Please don't you dare say to my attorney that you know how I feel because you don't. Until you stand up for the common citizen, instead of looking out for big businesses with high paying lawyers, I am ashamed to have known all of you. I am ashamed to live in Texas where everything is corrupt and where our state is sending a strong message to corporations that the sale or provision of alcohol to our youth will be tolerated.

I will promise you this. This is not the end of the story. You will see me a lot more. I will either find more evidence against CEC Entertainment or another way to fight them and you, if necessary. It may be time now to take a good look at the TABC. I will continue on. Maybe in the future, if enough pressure is applied, there will be concern that cases are resolved with the highest degree of justice. But, for now, Commissioner Shivers, it's not happening. Perhaps the way the TABC is run is why we are number one in the nation in alcohol-related deaths among the 15 to 20-year-old age group and have been for some time. Justice for the common citizen is not there, and large corporations know it.

CEC Entertainment is now a known liar, and you keep trusting them to do the right thing. No matter how many violations occur, after they never carried out the first agreement that their own attorneys wrote, it seems they can get around anything you do or write, doesn't it?

On September 12, 2000, I received a call from a woman in Crystal Lake, Illinois, where CEC Entertainment is building a new Chuck E. Cheese restaurant. The residents of that community don't want alcohol sold there, however, the CEC Entertainment representative at that council meeting said that they were - quote - very responsible - unquote - and that she was proud of their record. The community of Crystal Lake, Illinois is prepared to fight them. They have sent a letter to you, which apparently I may have dropped, but I will read a portion of it to you.

The community of Crystal Lake, Illinois is prepared to fight them, and they have sent a letter to you, and this is the letter. Quote - I'm deeply troubled by the fact that such a problem existed, yet our town was left - quote - in the dark - unquote. Please don't allow other small towns to be swayed by this corporation's - quote - spotless - unquote - record. The TABC should give other states and municipalities the means of properly informing

themselves before making a decision that will impact their community. This corporation blatantly violated their own agreement, not only in the very location where they had a prior infraction, but in over 90 percent of their establishments in your state. I urge you to place cancelled for cause on the file of Chuck E. Cheese when removing their liquor license. You would expect the same courtesy from us - unquote.

Commissioners, I sincerely hope you or the people you love are not on the road at the same time as a teenager that works and drinks at Chuck E. Cheese. All I have ever wanted is justice for Matt's death and no more. I will fight whomever I have to until I get it. I am not afraid of Fulbright and Jaworski or CEC Entertainment or the TABC. Don't think for one moment that I will give up and go away. When there is true justice, not mock justice, for Matt's death, then I will leave you and CEC Entertainment alone. All I want is for them to have a record with cancelled for cause on it so other communities can protect themselves from those corporate criminals.

I want you, commissioners, to see who we are talking about today. The living, breathing, human being, my beautiful son, Michael Matthew Knight. Just a moment, as I get these in order. This is a picture of Matt when he was born. This is a picture of Matt when he was four at Disney World. This is Matt when he started school. This is Matt when he took kung fu. This is Matt when he won dance awards. This is Matt when he played football. This is Matt when he was 16. This is Matt when he started work at Chuck E. Cheese. This is where Matt is buried, and where I spend every Christmas, Thanksgiving, Easter, Mother's Day and every other holiday and Sunday. This is the last picture I have of my beautiful boy.

I am living the nightmare the rest of you wake from in a cold sweat. This is Michael Matthew Knight. I pray you see his face when you wake up in the morning and when you go to sleep at night. You had the chance to do the right thing, to find justice, and you threw it away. I'm sure we all here know why. To me, Matt will always be my beautiful, beautiful boy.

Commissioners and members of the TABC, since you have done such a wonderful job of keeping the record of CEC Entertainment completely clear of cancelled for cause, I would suggest that you change TABC from Texas Alcoholic Beverage Commission to Texas Alcoholic Businessman's Commission. Thank you.

MR. SHIVERS: Thank you, Ms. Knight. Mr. Steen, do you have any questions for Ms. Knight?

MR. STEEN: I would like someone to explain about this agreed order that was entered and the violations that have been found and what's being done now.

MR. BAILEY: Ms. Gordon is here, and I think she would be the appropriate person to do that.

MS. GORDON: That order, as it deals with Chuck E. Cheese's permits and licenses, specifies that they will turn in all of their licenses and that they will not reapply for two years. Even if we tried it, we couldn't have gotten more than a year. This way, we have taken them totally out of the alcohol business for two years. There are other conditions which indicate we will not protest at the end of two years on the basis of the facts leading up to this particular case. However, we are left open to protest on the basis that a child's venue may be incompatible with an alcohol license, and that's

still out there.

MR. STEEN: This has been done?

MS. GORDON: Yes, sir, it has, and I did recommend the approval of it, because two years out of the business, we don't even have the legal authority to do in a hearing.

MR. STEEN: Tell me about this cancellation for cause.

MS. GORDON: Cancellation for cause may have an effect on other state licenses. Commissioner, I cannot tell you that it will. We knew one thing, that it would have an effect on liability, but that liability has already been capped by the fact that there were two civil suits coming out of that wreck that went against Chuck E. Cheese, and it's already done its work, so to speak.

MR. STEEN: So, this agreed order has been finalized now?

MS. GORDON: Yes, sir, it has.

MR. STEEN: Have they turned in their licenses and permits?

MS. GORDON: They are on their way here now, sir. They are being mailed from Dallas. All of them have been collected. They have not sold, if I am correct, since August as a show of good faith. There will be no Chuck E. Cheese selling alcohol in the State of Texas for two years.

MR. STEEN: I agree with Ms. Knight that after they entered that first agreed order, for them to have blatantly violated it, as apparently they did, I find that pretty outrageous.

MS. GORDON: It was, sir.

MS. MADDEN: Will they have to reapply for it in two years?

MS. GORDON: Yes, ma'am, they will.

MR. SHIVERS: Does anyone have anything else for Ms. Gordon?

MR. STEEN: No.

MS. MADDEN: No.

MR. SHIVERS: Ms. Knight, may I ask you a question? Is she gone?

MR. BAILEY: Yes, sir.

MR. SHIVERS: I regret that. We are all terribly sorry for Ms. Knight's pain. It's obvious what she is going through. I don't pretend to understand it. I have never lost a child.

I'm at some loss, and I'm sorry she's gone, because I would like for her to explain to me exactly what she means when she says she wants justice. I don't know that it is in the power of this commission or, perhaps, not even in the power of the courts to grant her the relief she so desperately seeks. I wish we could.

I have never been particularly happy with the limitations on our ability to cancel licenses for egregious violations of the Alcoholic Beverage Code.

The code really doesn't give us that authority. I have tried, ever since I've been on this commission, to get the legislature to give us more authority to do that. So far, they haven't. I'm afraid Ms. Knight's avenue, if that's what she wants is for us to be able to cancel a license for repeat violations, cancel it for cause and put them out of business entirely and forever, that authority is going to have to come to us from the legislature. We cannot do it unilaterally.

I will not comment on Ms. Knight's allegations or references to the commissioners personally and our integrity or to the commission's actions. I understand she's upset and that's quite understandable, and there's no point in commenting on that any further.

As I understand it, we have done all and more than we can do in this case. I have no idea why a venue that markets its products and its theme to children feels it necessary to sell alcohol, anyway. Apparently, we can't prevent that either, other than as Ms. Gordon explained, protest the appropriateness of an alcohol license in a venue that is primarily targeting young children.

Anything else?

MR. STEEN: No.

MS. MADDEN: No.

MR. SHIVERS: Approval of the minutes of the August 28, 2000 meeting. Any changes to the minutes?

MR. STEEN: I so move approval.

MS. MADDEN: Second.

MR. SHIVERS: All in favor, aye.

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye.

Now we will go into executive session to consider the administrator's compensation.

The commission convened in executive session at 2:30 p.m. and reconvened in open meeting at 2:45 p.m.

MR. SHIVERS: The commission meeting of September 25, 2000 is now back in open session. During executive session, no votes were taken, no final decisions were made.

Administrator's report, Mr. Bailey?

MR. BAILEY: Mr. Chairman, briefly, I would remind you that we completed the last fiscal year, and I indicated to you last month I would give you a brief report.

I'm pleased to tell you that the agency stayed within all of its budget and budget guidelines in regards to travel and salary caps and those kind of

things. In regards to our performance measures, we met all of our key performance measures. The ones that we actually exceeded pretty highly was the number of alcoholic beverage containers and cigarette packages stamped at the border at our POE operation. We actually accounted for about 144 percent there. In regards to the number of alcoholic beverage containers and cigarette packages confiscated, we had about 175 percent. I will remind you, though, that part of that number may come as a result of the law suits that have been on again and off again in regards to our ability to collect taxes on cigarettes that are not properly labeled with the surgeon general's warning and the proper notifications on them.

In regards to the enforcement division, we far exceeded the performance measure in regards to the number of youth instructed by the agency. We clocked in at 119 percent of our goal. The area that we were down the most in enforcement was the number of criminal violations found during inspections. That was only 79 percent. Fortunately, it's not a key measure, so it's not something that will, I think, draw a lot of attention. We are trying to determine, even as we speak, what may have accounted for that. We would hope it's a voluntary compliance.

MR. SHIVERS: Not enough people breaking the law is what the problem is. We've just got to get out there and find some more crime.

MR. BAILEY: We are pleased about that until we learn otherwise.

MR. SHIVERS: That is one of those measures that I find hard to fathom.

MR. BAILEY: Yes, I agree.

That would conclude my report, unless you have any questions.

MR. SHIVERS: Ms. Madden?

MS. MADDEN: No.

MR. SHIVERS: Mr. Steen?

MR. STEEN: No.

MR. SHIVERS: Thank you very much.

We have a lengthy agenda, and let's see how quickly we can get through the rest of it.

Item five is to receive information regarding the cost of privatizing the internal auditor function. I understand we have some presentations. Gene, are you going to introduce this subject to us?

MR. BOWMAN: We have sent out 10 requests for information packets and, of those ten, we received four. We have invited the four firms that did respond to give a short five to ten minute presentation and open it up for questions from you.

MR. SHIVERS: I understand Mr. Gregorczyk and Mr. Jansen are going to make the first presentation. Is that correct?

MR. BOWMAN: Yes.

MR. SHIVERS: I would ask you, in the interest of time, to stay on the short side of that time limit that Mr. Bowman stated. Gentlemen?

MR. GREGORCZYK: Good afternoon, I'm Russell Gregorczyk. I am half the partnership of Jansen & Gregorczyk. My partner was tied up with some other things today.

Our firm has been doing the internal audit function for about nine years now. We were probably one of the first firms, and we probably have as many state agencies as any other firm that I'm aware of. So, we think we are very well poised to do the internal audit.

I actually went in and read your board minutes from, I think, the July meeting, and I gathered you had a lot of concerns about whether it's even feasible to outsource. Some of the agencies you cited in that discussion, I actually do the internal audit for, such as the Department of Information Resources and the Health and Human Services Commission. Those are fairly substantial agencies with lots of money and quite a few staff. I don't believe anybody I do the audit function for has 500 people but many of them have lots of money that flows through their operations.

I'd like to say about three things about our firm. We are a little bit different than some CPA firms. I use really seasoned management people as my internal auditors. Anybody that works for me, and would work on this engagement, has about 25 years experience. They are not all CPA's. Two of the people that I have are retired state employees with experience as CFO's of state agencies, program evaluation type skills, that type thing. I find those folks are very successful as internal auditors.

As compared to a one-person shop, clearly there would be a learning curve. We would have to learn a little bit about the agency, but I think we can come in and be successful day one, because we do have some really unique skills.

The second thing I would like to say about our firm is that we've been through the internal peer review process about three times now, and I actually brought, if you would like, a copy of our executive summary from those reviews at DIR and the other agencies. Those reviews have always found that we are in complete compliance with internal audit standards and that our work is a very cost effective way for agencies to meet the Internal Audit Act requirements.

I'm going to kind of cut it short. I know you've already run longer, but I will be happy to respond to questions about our firm. We think we are very well poised to do your internal audit and we would welcome the opportunity to do so.

MR. SHIVERS: Thank you. Questions?

MS. MADDEN: I'm going to commend you for reading our minutes and getting familiar with the agency. Do you feel like you are familiar with the agency? Could you tell us where you think some of the risk areas might be?

MR. GREGORCZYK: No, I really can't. Obviously, every agency is different. I did talk to your internal auditor, and he felt like the internal controls had certainly been improved over the years, and he didn't feel like there were any high risk areas. We have a process we use, and I've outlined it in my proposal. We'd have to come in and meet all your key staff. It would take us a while to really make that assessment. I think we can do it within a month or so but, no, I'm not familiar with what your risk areas would be.

MR. SHIVERS: What's your response time if you get a call for a special project?

MR. GREGORCZYK: I'm very responsive. You can talk to any of the executive directors, and I do get calls for special projects. Since I'm not a solo practitioner, I can pretty much pull off and do something. Now, it would depend on the scope of the project. If you told you me you had to have a 300-hour project tomorrow, I might have to make some arrangements but, typically, we can react pretty quickly. My partner, I don't even plan to use on this engagement. He does more financial audits. I do more of the internal audits, but he's certainly available, too, so I have a pretty good core of people. We are not a large firm, but we do react quickly. Certainly, if you'd check with any of the executive directors, they would indicate to you that I'm very responsive.

MR. STEEN: You said that not all your audit managers are CPA's. You said you had some people that had been formally with state agencies?

MR. GREGORCZYK: Yes, I have found that semi-retired state employees are very good internal auditors because they have the management experience. You do have to be a CIA to be the internal audit director, but many internal audit shops, these days, really don't go after accounting types because there are many other things to look at in the management audit world besides just accounting controls. One of my staff just retired as a CFO for a state agency, so she's very familiar with USAS, USPS, all the accounting-related things.

I failed to mention one thing. It's in my proposal. We actually do the accounting for one state agency. They don't have any accounting staff. It's a pension agency that I have done for about 10 years, so I am very familiar with all of the aspects of state accounting and all of the various systems, USAS, USPS, ABEST, because we actually do the accounting for that agency. That's about a 35 million-dollar agency. But, I have found that you don't necessarily want CPA's or don't need CPA's - let me say that - as your internal auditors. There are other things besides financial that need to be looked at in the agency.

MR. STEEN: In your proposal you have yourself and James Jansen and Edwin Floyd and Patricia Bizzell. It's Patricia Bizzell that...

MR. GREGORCZYK: She's my most recent employee. She actually just joined our staff.

MR. STEEN: She was the CFO for...

MR. GREGORCZYK: Early Childhood Intervention. She's also got a master's degree in accounting. All the people that I have, those two people have master's degrees, as do I. I personally have about 15 years with the State of Texas. I was the chief financial officer for the Employees Retirement System of Texas before I started my practice.

MR. STEEN: What about Edwin Floyd?

MR. GREGORCZYK: Mr. Floyd is a retired state employee. He worked in primarily program evaluation for many years. The Department on Aging was his primary agency. He's also retired military. He's been working for me for about four and a half years now. He's done audits of virtually all the agencies that we work for.

MR. STEEN: You've got a total fee estimate, but that's just an estimate and if you got this you would bill...

MR. GREGORCZYK: It is an estimate. It's impossible to really give you a firm figure until we

would come in and develop an audit plan based on the risk assessment and really decide, jointly, with management and the commission, which topics we are going to audit. I put that estimate in because I'm pretty confident, because I've done this for so many years for so many agencies that we could work for about that many hours that I put in there. I think we can provide you with an effective internal audit program. Staff internal auditors do get involved in lots of non-audit type issues. There are meetings to go to and other things. We cut out a lot of that. We are here to just do the audit work.

MR. SHIVERS: Any other questions for Mr. Gregorczyk?

MR. STEEN: No. Thank you very much.

MR. GREGORCZYK: Would you like a copy of our quality review that we had just recently done?

MR. SHIVERS: That would be great. Thank you.

MR. STEEN: You are located in Kyle?

MR. GREGORCZYK: Kyle, Texas. We find that we do most all of our work at the agencies, though. I have an office in Kyle, but we will be here doing all the work.

MR. STEEN: How far is Kyle from here?

MR. GREGORCZYK: Back down the interstate about 30 miles towards San Marcos.

MR. SHIVERS: It's just the other side of Buda.

MR. STEEN: I go by it all the time. It sounded familiar.

MR. SHIVERS: Look to the right when you get in that area. You will see a water tower on the west side of the highway and it says, "Kyle."

MR. STEEN: I remember now.

MR. SHIVERS: Thank you, sir.

MR. GREGORCZYK: Thank you very much for the opportunity to make this presentation.

MR. SHIVERS: Robert Doner?

MR. DONER: Good afternoon. My name is Robert Doner. I am a sole practitioner, and I live here in Austin in Westlake Hills. In contrast to the prior gentleman, I don't have years of state employment in accounting and so on and so forth. I first became a CPA in 1964. I am a member of the Texas Society of CPA's and the American Institute of CPA's. I'm an associate member of the Certified Fraud Examiners and a member of the American College of Forensic Examiners.

All of my professional career has been in accounting, auditing, management auditing and contractual compliance, etcetera. In the past few months of this year, I've done some work for the State Auditor's Office in a compliance and efficiency audit which was an interesting experience.

I am semi-retired at this point in time. I'm very interested in this type of a project, and it would fit very neatly into my own personal and professional

plans. I'll be happy to answer any questions anybody might have.

MS. MADDEN: It says that you did provide audit assistance for a few months...

MR. DONER: Yes, that was February, March, April, along that period of time.

MS. MADDEN: So, you would feel comfortable taking on a position of working with the TABC?

MR. DONER: Would I feel comfortable?

MS. MADDEN: Yes.

MR. DONER: Yes.

MS. MADDEN: You are not new to this, obviously, because, as you said, you've been in accounting since 1963.

MR. DONER: Well, I've done a lot of work for the Insurance Department, a lot of receivership in the district court, special master in the district court and insolvent insurance company work. I've worked for the State of Missouri insurance commissioner, so I've had a fair amount of experience, both good and bad. Yes.

MS. MADDEN: A lot of times people can bring in a new perspective when they are in your position.

MR. DONER: I think so. It is a fresh perspective. There are other worlds, and sometimes we don't take advantage of those. I think it would work fine.

MR. SHIVERS: Mr. Steen?

MR. STEEN: No questions. Thank you very much, Mr. Doner.

MR. SHIVERS: Thank you, Mr. Doner.

Mr. Vinyard?

MR. VINYARD: My name is Larry Vinyard. I am a sole practitioner. I appreciate you taking the time to give me a few minutes of your time. I'd like to comment on three things. I think you have a list of my qualifications before you. Basically, I'd like to point out a few that will set the tone. I want to talk a little about my qualifications, a little bit about the questions you had in your July and August meetings and what I think I can bring to you that might help you with some of those questions.

I'd like to point out, first, on my qualifications list that I spent 27 and one-half years with the State Auditor's Office, and I did a lot of regulatory agencies. This was not one of the more recent ones. Way back in distant history, I had some associations with TABC, but those were as a regulatory and overall state audit.

I've been working at various things throughout the time since I retired from the State Auditor's Office two years ago. I have experience with all types of systems in state agencies. In fact, I went back and worked for the state auditors in their consolidated state audit last January and February. In fact, I wrote the notes for the financial statements. Also, during my tenure at the State Auditor's Office, I was the internal audit coordinator for 79 state agencies. My job was to provide them with assistance and

recommendations and other information. I currently teach internal auditing at one of the local universities and I teach intermediate accounting and financial analysis at a local community college. I have spent time providing quality control to a couple of small internal audit agencies, and I was the lead auditor on evaluating the effectiveness of the internal audit function in the state when it was first started and also the state property accounting system.

You can read the rest of the qualifications. I do have some experience evaluating other state audit functions. I was involved in six of those, including Illinois, New York, Pennsylvania, Delaware and Alabama.

In your July and August discussions about the internal audit function, I think there was some question about whether or not the depth of the audits could be maintained by someone coming in from the outside and also are you really getting your money's worth? I think the answer is that if you hire someone with state experience - for example, myself, and I won't exclude some of the other gentlemen that will be up here, because they do have state experience - I think you will get your money's worth, and I think you will get the depth that you are looking at. I'd like to offer to you the fact that the internal audit function is a cooperative effort between the board and executive management. They are the people who help the internal auditor determine the risks that are going to be evaluated and the approach that's going to be taken. It has to be a cooperative effort, otherwise, you won't get the information you want, executive management won't get the information they need to make decisions. I'm a firm believer in a cooperative effort with no surprises. That's about the only way you can really have an effective internal audit function.

So, I think the questions you asked, they are very valid. They are things that have been heard for a lot of years in the internal audit function. I think someone, like myself, can bring to you a good knowledge of the system. For example, your operation here, you have education, enforcement and, I believe, collection, are three of your largest functions. It doesn't take that long to get up to speed. You are like most other regulatory agencies as far as your overall functions. Some of the particulars may take a few minutes to get up to speed, but it's not that difficult to come into an agency like this with state experience and get up to speed pretty quickly.

You are also getting someone with the most current knowledge. For example, I teach internal auditing. I know that the internal audit function has changed in character and is becoming more of a consulting process than it is an auditing process. I bring those kinds of things to the table, and I think that can also help answer some of the questions that you have.

Also, I have training in the changes that are coming under the Governmental Accounting Standards Board Pronouncement 34, that is going to change your reporting model financially. I teach some of that in my classes, also.

In wrapping this up, I think I have the qualifications to help you reach the level that you would like to in auditing. I think we can answer your questions effectively, and I think I have the background and knowledge that can help you out. I'll be glad to answer any questions that you might have.

MR. SHIVERS: Ms. Madden?

MS. MADDEN: Your resume is certainly impressive and, obviously, you are going to be able to see things from both sides of the table which will be a real plus. I see your fee here, but could you tell us how many hours you think or just guesstimate?

MR. VINYARD: I think that would be very difficult until executive management and management sat down and determined what the risk is. I quoted you an hourly rate. That's just simply something to start from because really the question is where are your risks? Are your risks in administration? Are they in collection? What areas are they in? Until the input comes from the commission, executive management, it will be pretty difficult for anybody to sit down and tell you this is what it is going to cost.

What I do have, and what I do bring to the table, is flexibility. We can take it one step at a time. We can go through, identify the risks by the various categories, and then determine how much in resources the commission wants to allocate. So, flexibility is there, and I think you can pretty much determine any range.

The original request, I think, identified 800 to one thousand hours. That's probably about right when you consider some of the administrative work that you may ask for and three to four audits for that period of time. That's a pretty fair estimate. So, that's about what you could get for that amount.

MS. MADDEN: Thank you.

MR. SHIVERS: One thing that I'm interested in, in addition to financial audits and compliance with legislative appropriations and our performance measurement requirements, I'm interested in finding ways to do what we do more efficiently.

MR. VINYARD: I think what you are talking about is a management audit, and the information that would come from a management audit - or a performance audit if you care to characterize it that way - is probably something that the consulting side of the work would probably produce a better product for you because the people that do the work, that actually do the performance measures, know how to do things better. Sitting down and listening to them and coming back to management with recommendations to improve the efficiency and effectiveness of your performance measures is something that can be done either by audit or by consulting work. It's really a choice as to how you would like to go at it.

MR. SHIVERS: Mr. Steen?

MR. STEEN: One of the things we are looking at is the cost in doing this comparison. Of course, you have given us an hourly rate, but you say you are not at the point where you can even give us a ballpark figure on what you think...

MR. VINYARD: I think I would hesitate to do that, because without a determination of risk - what you perceive as risk, what the chairman perceives, what Ms. Madden perceives, and, for that matter, your executive director perceives as a risk - I think it would be folly for anyone to give you an estimate because the real question that you want to put to your internal auditor is, "How do you help me manage the risks in my agency? How do we reduce the high risks?" If you can tell me what your high risks are, I can give you a pretty good estimate, but I think that, again, is part of the team effort of determining what you want an internal auditor to do. You can either allocate a few resources or a lot of resources, but the real question is do we

get to the risks and do we evaluate those risks? If so, that's going to determine how many hours in resources you are going to take.

MR. STEEN: Thank you.

MR. SHIVERS: Thank you, sir.

MR. VINYARD: Thank you for your time.

MR. SHIVERS: Rene Gonzalez?

MR. GONZALEZ: Thank you, Mr. Chairman and Members of the Commission. My name is Rene Gonzalez, and I am the senior managing partner for Garza/Gonzalez & Associates.

As our resume and proposal indicates, we have been in existence for 25 years. Our whole thrust in those 25 years have been in the area of governmental accounting, auditing, management consulting, compliance audits, and we are pleased to indicate to the commissioners that we do have a number of state agencies that we have been performing internal audit functions for for the last six years and successfully, I may add.

We do have 19 professionals in our firm. All of them have familiarity with governmental accounting which is different than private industry. We do perform audits, as I indicated, complying with the Texas Internal Audit Act, and I think some of the primary functions that we perform for our clients, as outlined on Page 10 of our proposal, basically indicating to you that we do a planning process.

Every gentleman that has been here on this particular item has indicated to you that there is a process that we all have to go through. We are not familiar with the agency 100 percent, but during the planning process we would then become familiar with the agency, meet with the different individuals that have anything to do with running the organization and, based on that, develop what we call the risk assessment issues and the plan.

Once we develop the plan - we understand that we report directly to the commissioners. We, hopefully, get appointed by the commissioners and, based on that, we report directly to the commissioners, so the audit plan is approved by the commissioners and then we present our reports directly to this body. That doesn't mean to say that we don't coordinate with your staff, but the ultimate responsibility is the reports that we issue directly to you.

The second part of our approach is the audit performance process. That's where we come in and, based on the audit plan that you have approved, we conduct the audit test, the reviews, and then ultimately issue the report that is not only issued to you and discussed with you, as members of the commission, but ultimately goes to other agencies, such as the governor's office, the LBB, etcetera.

I know you are running a little behind schedule, and I will be more than happy to respond to any questions that you may have. On Page 9 of our proposal we also indicate a partial listing of some of the state agencies where we have been performing successfully these types of audits in the last six years or so. In addition to those that are not included herein, we do some work for the Austin Community College and the Huston-Tillotson Community College here in Austin. I'd be happy to respond to any

questions, Mr. Chairman or Members, that you may have.

MR. SHIVERS: Where is your firm located?

MR. GONZALEZ: In San Antonio. We do have a 1-800 number. We are available. We have not had any problem with any agency that we have served in Austin. In some cases, commission meetings have been as early as seven thirty in the morning. Those commissions that may have an audit committee where we report directly to, I am happy to report to you that we haven't had any problem in meeting our deadlines or in issuing the reports that are required to be issued.

MR. SHIVERS: Have you had any rapid response requests?

MR. GONZALEZ: I'm sorry?

MR. SHIVERS: Have you had any rapid response requests from any of the agencies you audit?

MR. GONZALEZ: We have some, on occasion, yes, sir. And, by rapid response, I guess, all of them required some planning. We haven't got anything that said we need to do that within the next couple of days or so, but we do meet with the individuals and do the planning, and we've started projects as quickly as a week, subsequent to being told that we need to begin a particular area or subject.

MR. STEEN: Mr. Gonzalez, I was looking at your resume, and you said that your experience includes performing and supervising internal audit functions for various state agencies, and you list the Advisory Commission on State Emergency Communications and the Texas Lottery Commission, Texas Commission on Jail Standards, Texas Juvenile Probation Commission, Texas Department of Banking. Are you doing all of those?

MR. GONZALEZ: Yes, sir.

MR. STEEN: Now?

MR. GONZALEZ: Yes, sir, presently. We've started this particular audit function in our firm six years ago, and we've been adding as we've gone along. In some cases, Department of Banking, we've been doing for five years. The 911 Commission for six years. The last one that we've added is the Texas School for the Deaf, which was about three years ago.

MR. STEEN: Mr. Vinyard, who spoke before you, mentioned that it was difficult for him to ballpark a number of hours, but you've been able to do that?

MR. GONZALEZ: Based on data that I've been able to acquire from speaking to your prior internal auditor and reviewing some of the areas of the agency, we can kind of assess that, and the experience that we have with other organizations, where we are thinking in terms of anywhere between...three audits, probably, on an annual basis. In addition to that, of course, that would include preparing the risk assessment that needs to be done, preparing the annual internal audit report that is required so, all that encompassing, I would estimate that those would be the hours. And, they are an estimate.

Assuming we get appointed, we would come in and review those particular items and we would give you a detailed audit plan of what we are recommending to the commission to be looked at based on the risk

assessment that we would develop. It's ultimately, as I indicated earlier, your decision as to which areas you want us to look at, and if we have problems in a particular area, once we get into that particular area - it's happened in the past - where we come back to the commissioners and say, "Look there's some problem areas. We may need to extend our auditing procedures." And, we would have to get authorization from you before we do that.

MR. STEEN: Thank you.

MS. MADDEN: It says in your proposal that you think it's going to be about 600 hours, correct?

MR. GONZALEZ: Yes, ma'am.

MS. MADDEN: Okay.

MR. GONZALEZ: That's range.

MS. MADDEN: Under your partial listing, are these agencies kind of comparable to the TABC in employees?

MR. GONZALEZ: There is not one agency that's comparable to any other agency as far as we are concerned. You are all pretty unique.

MS. MADDEN: Yes, but I mean in complexity of programs and FTE's and things like that. If I remember correctly, the Texas School for the Deaf has what? It's mid-size like we are.

MR. GONZALEZ: Dollar-wise, you are about the same size. Personnel-wise, the agencies vary. Of course, your regulations all differ. You have all different tasks and assignments. The School for the Deaf is a little different in that it's not only a state agency, but it also functions as a school district. So, every agency that we have performed audits for in the past are pretty unique.

MS. MADDEN: Thank you.

MR. SHIVERS: Anything else? John?

MR. STEEN: No.

MR. SHIVERS: Thank you.

MR. GONZALEZ: Thank you. I appreciate your time.

MR. SHIVERS: Given our long agenda and that we are running behind, is it the commission's pleasure to defer a decision on this for 30 days or would you like to discuss it and move on it now?

MS. MADDEN: Why don't we do it next time? What about you, John?

MR. STEEN: I think so. Mr. Bright, can we go into executive session and discuss any aspect of this?

MR. BRIGHT: I don't believe that you can. The closest exception allowed in the act is to discuss personnel issues. On three or four different occasions, our attorney general has ruled that that exception does not extend to things like hiring independent contractors, as this relationship would be.

MR. STEEN: That's fine to defer it. I would like to ask someone, Mr. Bailey, if they can check the references for us? I know Mr. Gonzalez, who just spoke, he gives a partial listing of his internal audit clients along with a contact person and telephone number. He's got a list of five people down there. Not just for Mr. Gonzalez, but all of them, if we could have the benefit of that. If they provided references, if we could check in with those references.

MR. BAILEY: Sure.

MR. SHIVERS: Obviously, our decision will be driven not only on the cost compared to an on-staff internal auditor, but also to the amount of coverage available by contracting for it. Having heard these presentations, we have a little more to think about and consider, and we will defer action on this until our October meeting.

Number six - consider appeal of 16 TAC §41.22 as published in 25 TexReg 7448 on August 11, 2000. This is Package Store Sales Over Three Gallons. Ms. Fox?

MS. FOX: If you will recall, this was a recordkeeping requirement that's been in our rules dating back to the 30's. We have had a request by the Package Stores Association to make an amendment to this rule but, after the staff reviewed it, we determined it was no longer serving its purpose and our recommendation is to repeal it. We've had no comment since the rule was published, and we would again recommend that we repeal this rule.

MS. MADDEN: So moved.

MR. SHIVERS: I have a motion. Is there a second and then we will discuss it?

MR. STEEN: Second. Just a quick summary of what we are doing here.

MS. FOX: This rule required package stores to record the name, the address, the license plate number and the signature of the customer if they sold over three gallons of liquor, which would be distilled spirits, wine or malt liquor. The original rule dated back to the 30's and had to do with bootlegging at the time, and it really no longer serves its purpose in that regard. We found that this recordkeeping requirement is not something that the agency has looked at as part of any reviews that it regularly does.

MR. STEEN: Someone has been keeping this information, but we haven't used it for a long period of time?

MS. FOX: Yes, sir, that is correct. There is probably some question if they actually kept it as the rule required, and we certainly never asked for it and reviewed it.

MR. SHIVERS: Any further discussion?

MR. STEEN: No.

MR. SHIVERS: All in favor, aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. 16 TAC §41.22 is repealed.

Consider repeal of 16 TAC §45.103 as published in 25 TexReg 7448 on August 11, 2000. This is Regulations of Happy Hour. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Members, we are asking you at this stage to repeal the happy hour rule but, in the next agenda item, we are asking you to adopt a new rule in its place. We don't call it happy hour, anymore - I'm sure everyone else will - but among many other changes, we are recommending we change it to a rule governing on-premise promotions.

As you may remember, we have had a series of meetings with interested people in the industry and the community to discuss what changes might be effective to this rule. We have been formally requesting public comments since August. We have not received much comment. What is before you is the rule that the staff recommends that you adopt with two minor changes.

We recommend changes to the rule as originally published. We recommend that you change paragraph (d). We recommend that you change it from, "The provisions of subsections (c)(1) through (c)(9) do not apply where..." to read instead, "The provisions of subsections (c)(1) through (c)(7) do not apply where..." The effect of this is that paragraph (c) lists all the things that retailers should not do and there are 11 of those things as we have described them. Paragraph (d) says that some of those provisions should not apply in the cases of private parties where it's an event for a specific organization. We originally proposed exempting private parties and private organizations from the first nine but, on further discussion and comment, we believe that the private parties should be subject to the rules in paragraphs (c)(8) through (c)(11). Paragraph (c)(8) is, of course, that they should not serve more than two drinks to a single consumer at the same time and (9) is that they should not use a cover charge or an entry fee to recover losses for cheap alcoholic beverages and (10) is that they should not engage in or allow drinking contests and (11) is our general catch-all provision that says other practices that are designed to encourage drinking to excess are a violation of this rule.

There is a second change that we are going to recommend here. Are you with me on paragraph (d)? Do you want me to talk about that some more?

MR. SHIVERS: I'm with you.

MR. BRIGHT: The second change that we will recommend is in paragraph (e)(3). Paragraph (e) lists a series of things that retailers ought to be allowed to do, anyway, and they stand as self-evident. Paragraph (e)(3) says that they may sell, serve or deliver a bottle of wine to a single consumer. Based on some suggestion and our own experience, we suggest adding the language, "...during the sale or service of a meal to the consumer." We don't feel like intemperate behavior is usually found when consumers order a bottle of wine with a meal, unlike other alcoholic beverages, and in many places they may re-cork that wine and take it with them if they didn't finish it during the course of their meal.

MR. SHIVERS: Let me ask you a for instance. For instance, someone is sitting in the cocktail lounge of one of the state's finer hotels, there is a group of six people, and instead of ordering six individual glasses of wine, they find it more economical to order the bottle of wine. There is no food provided. That would be a violation of this rule?

MR. BRIGHT: No. They may serve the wine to six people. What we are trying to avoid is...

MR. SHIVERS: To the individual?

MR. BRIGHT: Right.

MR. SHIVERS: Thank you. I withdraw the question.

MR. BRIGHT: That's our recommendation.

MR. STEEN: I want to mention that I wasn't here when this was first brought up, when we published it, and the meeting is running long today. Is there any reason we need to get this done today? I don't imagine there would be.

MR. BRIGHT: No, sir, there is not. We published it in August. We have up to six months to do something about that. We have a rule that is in place currently that we have been living with for five or six...

MR. YARBROUGH: That was just repealed.

MR. BRIGHT: No, they haven't voted on the repeal yet. So we have a working rule. This rule makes that old rule more efficient, so there is no immediacy to this question.

MR. STEEN: I might ask for some more time to look into this if that is all right with the rest of you?

MR. SHIVERS: It's fine. We used to have rules where we specified exactly what hours happy hour could be and what could be served....

MR. BRIGHT: That is correct. In our current rule, we have a happy hour is a period of reduced drink prices, and some of the provisions of that rule operate off of, you can't do this during a period of reduced drink prices. As we thought about it, and talked to the people in the field and the people in the industry and community, it became clear that if you shouldn't do it during a period of reduced drink prices, you probably shouldn't do it at other times, as well.

MR. SHIVERS: The whole thrust of this is don't do anything that's calculated to get people drunk. It's fairly simple.

MR. BRIGHT: Yes, sir. That's what paragraph (11) pretty much says.

MR. SHIVERS: I'd pretty much be happy with a rule that said just that. Don't do anything that's calculated to get people drunk.

MR. BRIGHT: You can amend this rule and adopt it in that way. I'm certainly not going to argue with you about it.

MR. SHIVERS: My friends in the industry would probably say, "Wait a minute. What do you mean by that?"

MS. MADDEN: I have no problem deferring it. This will maybe raise your comfort level. This agency brought in the industry one morning, and they talked among the staff one morning, and they also brought in MADD and Texans Standing Tall, and they pretty well chewed on it, which should give you some comfort, but I think it's just fine to defer it. Maybe we all need a little reflection.

MR. SHIVERS: Defer it if you want. I'm happy to act on it now, but we can defer it if you'd like.

MR. STEEN: I'd like to defer it. I haven't really talked to Mr. Bright about it.

MR. SHIVERS: Put this on the October agenda.

MR. STEEN: Thank you.

MR. SHIVERS: Number nine - Publication of Notice of Readoption of 16 TAC Chapter 45 pursuant to Rule Review Plan as published in 25 TexReg 823 on February 4, 2000. Marketing Practices.

MR. BRIGHT: Mr. Chairman and Members, we have, pursuant to our ongoing Rule Review Plan, since, I believe, January, been inviting public comment about what is necessary, unnecessary and can be improved in Chapter 45. That time period ended last month. This asks your permission to publish a notice in the *Texas Register* saying we are ending that review period and we are readopting the rules in Chapter 45.

MR. SHIVERS: Motion to publish?

MS. MADDEN: I so move.

MR. SHIVERS: Is there a second?

MR. STEEN: Second.

MR. SHIVERS: All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 10 - consider publication of proposed review of rules contained in 16 TAC Chapters 47, 49 and 50 pursuant to Rule Review Plan. Blanket Rules, Production of Alcoholic Beverages and Alcohol Awareness and Education.

MR. BRIGHT: Mr. Chairman and Members, this is the continuation of that rule review project. If you vote for this, as the staff recommends, we will publish in the *Texas Register* an invitation to anyone and everyone to tell us what we ought to do to improve, modify or delete unnecessary rules from 47, 49 and 50.

MR. SHIVERS: Motion to publish?

MS. MADDEN: I so move.

MR. SHIVERS: Is there a second?

MR. STEEN: Second.

MR. SHIVERS: Any discussion? All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

We have already had our executive session. Do any of the commissioners feel the need to go into executive session on anything else?

MS. MADDEN: No.

MR. SHIVERS: Mr. Steen?

MR. STEEN: I have one comment before we adjourn.

MR. SHIVERS: Please do.

MR. STEEN: Chairman Shivers asked for a moment of silence for our friend, Wade Spilman, at the beginning of the meeting. I just want to say that I will very much miss seeing Mr. Spilman at these meetings. I feel like he was part of the TABC family. He represented his client zealously, but on any issue, in my experience, that he weighed in on, he always brought great knowledge and unquestioned integrity. I would like to suggest that we, at a future meeting, pass a resolution that we can work on honoring Wade Spilman. Perhaps, we could get his family to come to a meeting and we can present it to his family, to honor a great man.

MS. MADDEN: That's great. What a wonderful idea.

MR. SHIVERS: That is a great idea. Staff, work on an appropriate resolution. I don't know if Mrs. Spilman would want to come...is Mike here?

MR. STEEN: Tom's here.

MR. SHIVERS: Can you do that, Tom?

MR. SPILMAN: Sure.

MR. SHIVERS: Thanks. Your dad was great. We really miss him.

Anything else?

MR. STEEN: That's it.

MR. SHIVERS: Motion to adjourn?

MR. STEEN: So moved.

MR. SHIVERS: We are adjourned at three thirty. Thank you very much.

TEXAS ALCOHOLIC BEVERAGE COMMISSION

Allan Shivers, Jr., Chairman

John T. Steen, Jr., Member

Gail Madden, Member

